

Modify each judgment and Affirm as Modified; Opinion Filed June 9, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

**No. 05-19-00117-CR
No. 05-19-00118-CR
No. 05-19-00119-CR**

**ROBERTO DELPILAR JASSO, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F18-34267-U, F18-34272-U, F18-34273-U**

MEMORANDUM OPINION

Before Justices Schenck, Molberg, and Nowell
Opinion by Justice Nowell

Roberto Delpilar Jasso was convicted of three counts of aggravated robbery and sentenced to 99 years' confinement.¹ In his first and second issues, appellant asserts the trial court erred by denying his motions for leave to file amended motions for new trial and denying his amended motions for new trial without a hearing. In his third and fourth issues, he requests we modify the judgments to reflect his plea

¹ We do not recite the facts underlying appellant's convictions because those facts are not necessary to resolve this appeal. *See* TEX. R. APP. P. 47.1.

to the enhancement paragraph in each case and to correct the prosecutors' names. In a single cross-issue, the State asks that we modify the judgments to reflect only one alleged enhancement paragraph in each case. We modify each judgment and affirm as modified.

A. Amended Motions for New Trial

The trial court signed each of the three judgments for aggravated robbery on January 17, 2019. On the same day, appellant filed his motions for new trial; the court denied the motions. On February 15, 2019, appellant filed a motion for leave to file an amended motion for new trial in each cause number along with the amended motions for new trial. Five days later, the trial court denied the motion in each cause number.

In his first and second issues, appellant argues the trial court erred by denying his motions for leave to file amended motions for new trial and by denying his amended motions for new trial without holding a hearing. In response, the State maintains that the denial of appellant's prior motions for new trial left no pending motions to amend. We agree with the State.

Once the trial court signed the orders denying appellant's initial, timely filed motions for new trial, appellant could no longer file amended motions for new trial. *See Rubio v. State*, 596 S.W.3d 410, 419 (Tex. App.—Dallas 2020, no pet.) (citing TEX. R. APP. P. 21.4(b); *Starks v. State*, 995 S.W.2d 844, 846 (Tex. App.—Amarillo 1999, no pet.)) (“The overruling of a preceding motion [for new trial] terminates the

time during which amendments are allowed.”); *Castillo-Diaz v. State*, No. 05-17-00644-CR, 2018 WL 5291979, at *3 (Tex. App.—Dallas Oct. 25, 2018, no pet.) (mem. op., not designated for publication) (“[O]nce the trial court denied [appellant’s] timely-filed motion, he could no longer file an amended motion for new trial.”); *Earl v. State*, No. 05-99-00237-CR, 2000 WL 566961, at *7 (Tex. App.—Dallas Apr. 28, 2000, pet. ref’d) (not designated for publication) (“Because appellant’s original motion for new trial had been overruled by the time appellant sought leave to file an amended motion, the time for amending the motion had expired and the trial court had no discretion to grant appellant leave to file an amended motion.”); *Else v. State*, No. 05-99-00238-CV, 2000 WL 566962, at *7 (Tex. App.—Dallas Apr. 28, 2000, pet. ref’d) (not designated for publication) (same)).

Because appellant could not file amended motions for new trial, we conclude the trial court did not err by denying his motions for leave to file amended motions for new trial and by not conducting a hearing. We overrule appellant’s first and second issues.

B. Modifications of Judgments

In his third and fourth issues, appellant requests we modify the judgments in each case to correctly reflect his plea to the enhancement paragraph alleged in each indictment and the names of the prosecutors. The State agrees these modifications should be made. In a cross-issue, the State also requests we modify the judgments

to show appellant was charged with only one enhancement paragraph in each indictment.

Appellate courts may modify a trial court's judgment and affirm it as modified. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). This Court “has the power to correct and reform the judgment of the court below to make the record speak the truth when it has the necessary data and information to do so.” *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, writ ref'd). Appellate courts may reform trial court judgments where “the evidence necessary to correct the judgment appears in the record.” *Id.* If a clerical error in the trial court's judgment is brought to our attention, we have a “mandatory duty” to correct it. *Id.* Where, as here, ““there is a conflict between the oral pronouncement of sentence and the sentence in the written judgment, the oral pronouncement controls.” *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004).

Each indictment contains one identical enhancement paragraph. Appellant pleaded “not true” to the allegation. However, the judgments show appellant pleaded “true” to two enhancement paragraphs. We modify the judgments to show appellant pleaded “not true” to the only enhancement paragraph alleged in each indictment. We sustain appellant's third issue and the State's cross-issue.

The judgments reflect the State was represented at trial by Roshanda Walker. However, the record shows the prosecutors were Sarah Stefaniak and Clayton

Cowins. We modify the judgments to show Sarah Stefaniak and Clayton Cowins represented the State at trial. We sustain appellant's fourth issue.

C. Conclusion

We modify each of the trial court's judgments as described above, and we affirm the judgments as modified.

/Erin A. Nowell/

ERIN A. NOWELL
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ROBERTO DELPILAR JASSO,
Appellant

No. 05-19-00117-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F-1834267-U.
Opinion delivered by Justice Nowell.
Justices Schenck and Molberg
participating.

Based on the Court’s opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

We **DELETE** the name “Roshanda Walker” as the “Attorney for State.” We **ADD** the names “Sarah Stefaniak and Clayton Cowins” as the “Attorney for State.”

We **DELETE** the word “True” as the “Plea to the 1st Enhancement Paragraph.” We **ADD** the words “Not True” as the “Plea to the 1st Enhancement Paragraph.”

We **DELETE** the word “True” as the “Plea to the 2nd Enhancement/Habitual Paragraph” and as the “Findings on 2nd Enhancement/Habitual Paragraph.” We **ADD** the term “N/A” as the “Plea to the 2nd Enhancement/Habitual Paragraph” and as the “Findings on 2nd Enhancement/Habitual Paragraph.”

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 9th day of June, 2020.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ROBERTO DELPILAR JASSO,
Appellant

No. 05-19-00118-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial
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Trial Court Cause No. F-1834272-U.
Opinion delivered by Justice Nowell.
Justices Schenck and Molberg
participating.

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As **REFORMED**, the judgment is **AFFIRMED**.

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ROBERTO DELPILAR JASSO,
Appellant

No. 05-19-00119-CR V.

THE STATE OF TEXAS, Appellee

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